

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TANA CRANDALL,

Plaintiff,

CIVIL ACTION NO. 04-CV-40364-FL

vs.

DISTRICT JUDGE PAUL V. GADOLA

WESTWOOD HEIGHTS SCHOOL
DISTRICT, JERRI-LYNN
WILLIAMS,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DISCOVERY AND
MOTION TO EXTEND DEADLINES**

On December 15, 2004 Plaintiff filed a five count complaint in the Eastern District of Michigan. Four counts (Counts I, II, IV, and V) stated claims based on Michigan employment discrimination law, and one count (Count III) alleged violations of Plaintiff's rights under the First Amendment. On December 17, 2004 Judge Paul V. Gadola entered an Order of Partial Dismissal, declining to exercise supplemental jurisdiction over Plaintiff's four state law claims. Plaintiff then refiled the dismissed claims in state court. Discovery has proceeded in both this case and the related state case.

Defendants noticed the deposition of Plaintiff in the instant case for September 30, 2005. Plaintiff failed to appear for her September 30 deposition. On October 11, 2005 Defendants filed the instant Motion to Compel Discovery and Extend Deadlines. On October 14, 2005 Defendants' motion was referred in its entirety to the undersigned for hearing and determination pursuant to 28 USC 636 (b)(1)(A) by the Honorable Paul V. Gadola. The parties fully briefed the issue and this Court, exercising its discretion under L.R. 7.1(e) waived oral hearing and now decides Defendants'

motion on the written briefs.

Plaintiff concedes that Defendants are entitled to depose Plaintiff once in this case without leave of Court. However, Plaintiff maintains that because Defendants have already deposed Plaintiff in the state court action, Defendants should now be barred from re-deposing Plaintiff in the Federal lawsuit. Plaintiff relies upon Fed. R. Civ. P. 30(a)(2)(B) which requires a party to obtain either leave of court or the stipulation of the other parties before deposing a witness who was previously deposed in the case. Plaintiff argues that the earlier state court deposition counts as a prior deposition in this case under Fed. R. Civ. P. 30(a)(2)(B).

Without an existing joint discovery agreement between the parties which contemplates and governs the taking and use of depositions and overlapping discovery in the two cases, the deposition of plaintiff taken in the state court proceeding cannot be substituted for the deposition to which defendants have a right in the instant case. The Federal Rules of Civil Procedure govern procedure in the federal courts. Fed. R. Civ. P. 30 allows Defendants an opportunity to depose Plaintiff in this action.

Therefore, Defendants' Motion to Compel Discovery is **GRANTED**. Plaintiff will appear for a deposition at a time and location to be agreed upon by the parties. Plaintiff is to be deposed within 30 days of the date of this Order unless all parties stipulate otherwise.

Defendants' Motion also seeks an extension of the existing Scheduling Order. This Court has been advised by Judge Gadola that an amended Scheduling Order will issue from his chambers. Therefore this Court **GRANTS** Defendants' Motion to Extend Deadlines and defers to Judge Gadola for the issuance of an amendment of the existing Scheduling Order.

IT IS SO ORDERED.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order

within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: 11/10/05

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

Proof of Service

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: 11/10/05

s/ Lisa C. Bartlett
Courtroom Deputy